IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 348 OF 2003

Shirish Anand Wankhede ... Appellant

V/s

The State of Maharashtra ... Respondent

Mr. V.P. Patil for the appellant.

Mrs. S.D. Shinde, A.P.P. for the respondent.

CORAM: V.G. PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED: 14TH NOVEMBER, 2006.

ORAL JUDGMENT (PER SMT.NISHITA MHATRE, J.):

1. The accused has been convicted for having killed his wife Alice. He has been sentenced to life imprisonment. The accused has also been convicted and sentenced under Section 498-A of the Indian Penal Code.

2. The prosecution alleges that the accused had killed his wife by setting her ablaze after dousing her with edible oil on 10.1.2000. The accused refused to open the door of his house in which he set his wife ablaze although Alice's niece and their maid servant requested him to open the door. It was only after Alice's cries

for help had stopped, that the accused opened the door and took her to hospital. By this time, Alice had died. The post-mortem report indicate that Alice died due to the 80% burn injuries suffered by her. The accused informed the police that his wife had committed suicide. This statement of the accused has been recorded and is exhibited as Exh.43 before the Trial Court. After the maid servant, Nirmala lodged a complaint on the next day i.e. on 11.10.2000, incriminating the accused that the accused was arrested. He was charged of having committed offences punishable under Sections 302 and 498-A of the Indian Penal Code. He has been convicted by the II Additional Sessions Court, Pune on 8.1.2003. It is this decision of the trial Court that has been impugned in the present appeal.

3. The prosecution has relied on the testimony of 7 witnesses in order to bring home the charge against the accused. There are no eye witnesses to the incident and therefore the charges are sought to be proved through circumstantial evidence.

4. PW-3 Nirmala, the maid servant working with the accused and his wife is the main witness in this trial. She has spoken about the quarrels which occured between the accused and Alice because the accused suspected his

wife's fidelity. The witness has spoken of the fact that they quarrelled in her presence and that the accused used to abuse and beat his wife. She has also spoken of a fact that the accused used to demand his wife's salary which she earned as a nurse while working in a hospital. This witness used to stay with the accused and his wife since she looked after their children. On the fateful day, she was at home with her employers when Alice had gone to her neighbour's place. The accused brought back Alice from the neighbour's place and they entered the bedroom. This witness has stated that the accused asked her to make some tea. She entered the bedroom to serve the tea when she heard the accused telling his wife to write something. The accused forced his wife to apply for leave from the hospital on that day. After serving tea, this witness states that, she accompanied Alice to the hospital to apply for leave. The accused followed them there and brought Alice back home on his scooter. This witness states that she walked back and found Alice with her neighbour. The accused again brought Alice back home. This witness states that the accused directed her to leave the house and return to her own house. However, according to her, the victim insisted that she stay. This witness states that the accused coaxed the victim into the bedroom, telling her that she should not fear

him and that he wanted two minutes to talk to her. The accused locked the bedroom door from inside which she tried to push open as she felt that Alice was in danger. She went to the neighbour's house and told the neighbour Mrs. Shaikh that Alice was being beaten by her husband. This witness states that thereafter when she returned to the house, she saw the accused holding a bottle of groundnut oil in his hand and entering the bedroom. When she noticed this, she tried to push open the door. Failing in her attempt, she left immediately to inform Alice's niece about the behaviour of the accused. She returned with Alice's niece and they found that smoke was emanating from the bedroom window. This witness saw the accused leaving with his son on his scooter. The accused had locked the house from outside. She and Alice's niece demanded the keys from him which he refused. All this time Alice was crying out for help. According to this witness, the accused halted his scooter at a little distance away from the house and returned to the house, opened the bedroom door and poured water on his wife, supposedly to extinguish the fire. This witness states that Alice's body was completely charred by then. She and Alice's niece informed Alice's sister, telephonically, of the incident. This witness has been cross-examined in great detail on behalf of the accused. She has conceded that

sometime before the incident Alice had tried to commit suicide by consuming some pills. She has admitted that she was frightened and, therefore, did not inform anybody else of the incident till she told her mother. She then lodged a complaint with the police on the next day. The complaint has been treated as the F.I.R. This witness, however, has contradicted herself in the cross-examination by stating that neither she nor Alice's niece demanded the house keys from the accused. She has also denied that the accused had refused to hand over the keys to them. However, on a perusal of the testimony of this witness, it is clear that Alice was being ill-treated and abused by her husband. This witness has last seen the accused together with Alice. She has seen the accused taking a bottle of edible oil into the bedroom where he had confined Alice. When she returned after informing Alice's niece about the acts of the accused, she saw smoke emanating from the bedroom window. The accused was present outside the house. The house was latched from outside. The accused opened the house after some time and Alice's charred body was found inside the bedroom. The aforesaid contradiction would only indicate that the door of the house was locked with the victim inside the bedroom and the accused was outside the house.

5. PW-2 Alice’s niece corroborates the testimony of PW-3 in all respects. She has spoken about the PW-3 informing her about the behaviour of the accused and the fact that Alice was confined in the bedroom by the accused and that he had entered the bedroom with a bottle of groundnut oil. She has also spoken of the fact that when she arrived at the residence of the accused, which was 10 minutes away from her sister’s house where she was residing at the relevant time. She and PW-3 noticed smoke emanating from the bedroom window. The accused opened the door of the house which was locked from outside. When they entered in, they found Alice’s charred body in the bedroom. The cross-examination of this witness has not elicited any contradictions. There are no omissions or additions in the testimony of this witness. Her evidence is, therefore, believable.

6. PW-1 is Alice’s brother. He has stated that Alice was married to the accused despite strong opposition from him and the family. According to them, the accused did not have any job and was in fact a wastrel. This witness has then stated that, in the year 1999 he and Alice patched up their differences and Alice told him that the accused used to physically ill-treat her and had threatened to kill her. He has spoken about the

fact that Alice had complained to the police about the ill-treatment meted out to her by the accused. A chapter case was filed against the accused by the police acting on Alice's complaint. However, the accused continued his violent behaviour towards the victim. He stated that he was informed about Alice's death by his sister on 10.1.2000. He rushed to the hospital where Alice's body had been taken for the autopsy. This witness has conceded that none of the members of the family complained to the police that they suspected the accused had murdered his wife. It was only after he contacted the maid servant, PW-3 on the next day that the police complaint was lodged.

7. The doctor who was examined as PW-4 has conducted the autopsy on the dead body of Alice. He has opined that several burn injuries sustained by the victim had caused the death. An internal injury i.e. haematoma on occipital region of scalp was also noticed.

8. As aforesaid, the accused had reported to the police on 10.1.2000 that his wife had committed suicide. He had stated that when he returned home at about 2.00 p.m. on 10.1.2000 he noticed smoke coming out of the bedroom window. He entered the house and found that the bedroom was locked. He claims to have broken open the bedroom

door and then found that his wife had doused herself with edible oil and set herself ablaze. He claims to have poured water from a pitcher on the body of his wife to extinguish the flames, however, she was completely charred. The report mentions that the accused then called for an ambulance and took her to hospital where the doctors declared her dead. He has stated that while extinguishing the flames, he sustained burns on his hands. However, the spot panchnama does not disclose that the bedroom door had been broken open or that it had a latch or that the latch was broken. A specific question was put to the panch witness who has proved the spot panchnama i.e. PW-5. This witness has denied that the bedroom door had been broken open. He has stated that the bedroom was smelling of groundnut oil and a nylon rope which was burnt at the end, with a knot intact on the other end was discovered in the bedroom. That rope also smelt of groundnut oil. The police had seized the articles from the bedroom including the partially burnt nylon rope and the bottle of groundnut oil. This witness has specifically denied the suggestion made in the cross-examination that the broken latch was lying near the door.

9. The investigating officer has been examined as PW-7. This witness also does not state that the bedroom door

had been broken open when the spot panchnama was drawn. PW-6 is the police officer who has recorded the statement of the accused that his wife had committed suicide.

10. In our opinion, the prosecution has proved that the accused was responsible for the death of his wife. It has proved the abusive behaviour of the accused. The prosecution has also proved that the accused ill-treated his wife, both physically and mentally. It has also been proved that on 10.1.2000 the accused and the victim were last seen together by PW-3 in their bedroom. This witness had also seen the accused taking a bottle of groundnut oil into the bedroom where he had confined the victim. The prosecution has proved that the accused did nothing to save his wife who was crying out for help, till her cries ceased. All these factors, in our opinion, lead us to the only hypothesis which is possible: the accused was responsible for his wife's death. The information given by him to the police about his wife's death due to suicide was obviously nothing but a red herring. However, the prosecution has proved that it was the accused who was responsible for Alice's death.

11. We have considered the entire evidence and other

material on record with the assistance of the learned advocate for the accused and the learned A.P.P. We have reappreciated the evidence on record. In our opinion, the conclusions reached by the trial Court are apt. We confirm the view taken by the trial Court and dismiss the appeal.

12. Appeal dismissed.

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